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PROMOTION AND PROTECTION OF HUMAN RIGHTS

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by the Sub-Commission on the Promotion and Protection of Human Rights to
undertake the study requested by the Commission in resolution 2000/63 on
human rights and human responsibilities**

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INTRODUCTION

1. In resolution 2000/63 of 26 April 2000, the Commission on Human Rights requested the Sub-Commission on the Promotion and Protection of Human Rights to undertake "a study on the issue of human rights and human responsibilities" and to submit an interim study to the Commission at its fifty-seventh session and a complete study at its fifty-eighth session (paragraph 2). It also decided to continue its consideration of that question at its fifty-seventh session under the same agenda item (paragraph 3).
2. The Commission approved that resolution after a relatively brief but substantive debate on its content.¹
3. During that debate, various Member States that would later vote against the text that was finally adopted² justified their opposition thereto on the grounds that the Commission should not take decisions on human responsibilities with regard to human rights, since it was the domestic law of each State that governed the relationship between the individual and the State.³ Another delegation, although it voted against the draft resolution referred to, explained its vote inter alia by stating that the individual's duty to the community had been "clearly set out" in paragraph 1 of article 29 of the Universal Declaration of Human Rights.⁴
4. The sponsors of the draft resolution emphasized, for their part, the fact that none of the delegations participating in the debate had contested the importance of the issue of human rights and human responsibilities. They further stressed that the concept of human responsibilities was intended to supplement rather than replace the responsibilities of Governments.⁵

I. CONSIDERATION OF DECISION 2000/111 ADOPTED BY THE SUB-COMMISSION

5. The Sub-Commission gave immediate and considerable attention to the important request made by its higher authority. No sooner had work started at its fifth-second session (July and August 2000) than several expert members started to consult their colleagues with a view to determining the most feasible and appropriate means of fulfilling the Commission's request.
6. Three points were especially relevant in those consultations. The first was the signal importance and complexity of the issue to be examined in the study, brought to light by the far-reaching discussions it had prompted in various United Nations bodies, and the wide range of points of view expressed in those discussions, of which the debate at the fifty-sixth session of the Commission itself was merely the most recent example.
7. The second point, which was a corollary to the first, concerned the need to carry out the study with the requisite honesty and depth; these are traditional hallmarks of the Sub-Commission's intellectual output, as has been acknowledged on many occasions by the Commission itself and by other bodies of the United Nations system. It is practically impossible to overlook the imperative need to conduct extensive and diligent research of the literature on the subject.

8. Last but not least, the Sub-Commission could hardly fail to note the especially narrow time-frame it had been given to fulfil the Commission's request strictu sensu.
9. It should be borne in mind that, at the initiative of the Commission itself⁶ and starting in the year 2000, the time made available to the Sub-Commission for its annual session has been substantially reduced (by 25 per cent), the session now being limited to three weeks. In addition, in 2000 the Sub-Commission had a heavy workload initially planned in August 1999, i.e., before the Economic and Social Council had adopted the formal decision drastically to cut back its working time (on the basis of the Commission's recommendation of April 2000) and before the Commission requested it to undertake the study in resolution 2000/63 of April 2000.
10. By asking the Sub-Commission to submit an interim study at its fifty-seventh session (to be held in March and April 2001) on this complex issue, the Commission left the Sub-Commission with only one possibility: to discuss and take fundamental decisions on the matter and to outline and write the report during the Sub-Commission's fifty-second session, which was to be held and indeed took place in August 2000.
11. In other words, if the Sub-Commission was scrupulously to fulfil the Commission's request, last August it would have had no choice but to:
- (a) Analyse and take an urgent decision on the best practical method for approaching an issue whose multiple aspects were, and still are, too obvious to ignore;
 - (b) Conduct an in-depth debate on the issue with a view to establishing the context or general content of the study to be carried out;
 - (c) Draft general and specific guidelines on the possible content of an initial draft of the preliminary report to be submitted to the Commission in time for the session in March or April of 2001;
 - (d) Select one (or more) of its members to write the initial draft or to write it collectively by sections;
 - (e) Discuss and decide on the structure and final content of the draft initial report thus written, with a view to submitting it for consideration to its higher authority.
12. For all of the above, the Sub-Commission would in all have had only one working session (perhaps one and a half sessions) during the third and final week of its deliberations, during which item 12 of the previous year's agenda would be discussed.
13. Obviously the short time made available to the Sub-Commission to fulfil the exact request of its higher authority made it absolutely unthinkable for it to endeavour to carry out any form of research into the extensive literature on the issue.
14. The consultations carried out during the first week of the Sub-Commission's deliberations in August provided, from the outset and on an obvious consensus basis, a solution with regard to the most appropriate method for fulfilling the Commission's request.

15. In keeping with the Sub-Commission's established methods and the output traditionally obtained, the best means of adequately fulfilling the request was to confer responsibility for it on an individual member who would be appointed to draft the requested study.⁷

16. It was obvious from the outset that an endeavour of that kind could not be successfully concluded by means of collective discussions and drafting by all the Sub-Commission's members in plenary. It should be added that it would have been illusory, given the shortage of time, to entrust that task to a session working group in order to expedite the work.

17. In the light of that observation, and also as a result of the consultations, it was abundantly clear that the Sub-Commission should not feel bound by any pre-established formula with regard to the specific working method to be followed to fulfil the request.

18. With regard to that crucial aspect, in paragraph 2 of resolution 2000/63, the Commission had obviously and wisely abstained from recommending any method to the Sub-Commission. In addition, the Commission's deliberations had clearly revealed that both the sponsors of the approved text and the delegations that had voted against it were fully aware that in asking for the study the Commission had not instructed the Sub-Commission to follow a predetermined method.⁸

19. In fact, the appointment of a special rapporteur was unquestionably, given the Commission's and the Sub-Commission's past and present experience of that approach, the only means of ensuring that the extensive and diligent research inevitably required by this kind of study would be carried out.

20. The Sub-Commission therefore felt entirely free to choose the method, and in decision 2000/111 decided to appoint one of its titular experts as special rapporteur in charge of conducting the study requested.

21. It must be emphasized that the Sub-Commission adopted the decision by a roll-call vote and a broad majority (14 votes in favour, 4 against and 5 abstentions).⁹ It did so in full awareness that all the members of the Sub-Commission taking part in the vote agreed that it was necessary to start the process of appointing only one special rapporteur to carry out the study, this and no other being the best method of appropriately and scrupulously carrying out the request from the higher authority.

22. That, of course, was the opinion of all those who sponsored and/or voted in favour of decision 2000/111. It was also, however, the view of the experts who, although they had sponsored another text that was not approved,¹⁰ were headed in the same direction (although they proposed to appoint another expert as the future rapporteur). That, lastly, was also the initial position of the French expert, Mr. Joinet, co-sponsor and driving force behind the alternative text, L.5 (although he would later be the author of the only amendment submitted, and also rejected,¹¹ to the text adopted by the Sub-Commission as decision 2000/111).

23. When it chose this method, which, to its mind, offered the best guarantee of technical quality for the study and of reliability with regard to the focus, conclusions and recommendations, the Sub-Commission was fully aware that it was not empowered to appoint and put to work, by and of itself, a special rapporteur.
24. Such a step necessarily requires the authorization of higher authorities, i.e. the Commission on Human Rights and the Economic and Social Council.
25. Not even in cases in which the Commission asks the Sub-Commission to carry out a specific task - like the present one - can the Sub-Commission break with procedure and overstep its authority by asking a special rapporteur to start work in that capacity without consent from above.
26. The most that the Sub-Commission can do in such a case is to inform the immediate higher authority of its decision to appoint one (or even, exceptionally, more than one) of its members as special rapporteur to carry out the study, ask it to endorse that decision and wait for the decisions of the Commission and the Council respectively with regard to the procedure undertaken to authorize the appointed person to start his work as special rapporteur.
27. This is exactly what the Sub-Commission did in its decision 2000/111, exercising its unquestionable right to do so.
28. For this reason, the final part of the decision requests the Commission to recommend that the Economic and Social Council explicitly authorize the special rapporteur - appointed in that decision - to undertake the study half way through 2001 with a view to submitting a preliminary report to the fifty-eighth session of the Commission in 2002 and a final report to the fifty-ninth session in 2003.
29. It must be pointed out that the Sub-Commission was aware that the method it had chosen, together with the rules governing the start of the duties of an appointed special rapporteur, meant that the special rapporteur would be completely unable to submit the preliminary report to the Commission at its upcoming fifty-seventh session.
30. This is dictated by the order in which the sessions of all three United Nations bodies are held. The Sub-Commission (which meets in August) cannot address the Council directly; it is obliged to forward matters requiring the Council's approval via the Commission (whose annual session takes place in March and April). It is during the forthcoming fifty-seventh session that the Commission will have the opportunity to decide, as it feels best, on the contents of decision 2000/111 of the Sub-Commission, and in particular whether it should recommend that the Council authorize the undertaking of the study, as the Sub-Commission asks it to do in the decision. In addition, should the Commission accede to that request and make that recommendation to the Council, the Council will not be able to take any decision in that respect until its meeting in July of this year.
31. Faced with the choice between, on the one hand, a method not involving a rapporteur and enabling the preliminary report to be submitted to the Commission in 2001 but not, to its way of thinking, providing adequate guarantees (in an extremely limited timeframe) of scholarly

diligence or in-depth analysis of the issue and, on the other hand, a method it considered the most appropriate (the rapporteur) and the scrupulous application of established procedure for special rapporteurs to start work (although this would imply postponing the reports to be submitted to the Commission by one year), the Sub-Commission decided, unequivocally and as was to be expected, in favour of the method it considered most conducive to a high standard of work.

32. That decision was (and is) in total agreement with the expectations the Commission has traditionally had of its subordinate body as a think-tank, in particular in this new phase of its work, recently launched with decision 2000/109, Enhancing the effectiveness of the mechanisms of the Commission on Human Rights.

33. As can be gathered, the Special Rapporteur appointed by the Sub-Commission agrees fully with that decision and voted for it in the Sub-Commission. He trusts that the Commission will understand the reasons prompting the Sub-Commission to organize its future work on this sensitive and crucial issue along the lines of decision 2000/111 and the recommendation it contains, and that, as a result, it will request the Council to authorize the study to be undertaken.

34. The Special Rapporteur wishes to express his confidence that the Commission will discuss the matter and take decisions on it exclusively on the basis of its resolution 2000/63 on the matter, of the importance and topicality of the material to be studied, and of the need to ensure the greatest possible technical accuracy in the drafting of the study requested by the Sub-Commission.

II. INITIAL OUTLINE OF THE STUDY REQUESTED BY THE COMMISSION IN RESOLUTION 2000/63

35. As the appointed Special Rapporteur, and for the reasons given above, the Rapporteur is convinced that it would be inappropriate to submit the preliminary report initially requested by the Commission this year. For the same reason, he will abstain for the time being from discussing matters of substance with regard to an issue that, moreover, has not to date been the subject of significant research.

36. Nevertheless, and with the declared intention of acting in an absolutely forthright manner towards the Commission and the Sub-Commission, he considers it would be useful to raise a number of operational and practical (and even conceptual) points, should the Commission and the Council honour him by authorizing him to undertake the study. Those points can and should be considered an initial outline of the possible contents of the preliminary report. They are listed below.

37. In the first place, and in spite of the fact that he is not obliged to do so by the terms of the text of decision 2000/111 of the Sub-Commission, the appointed Special Rapporteur proposes to submit for formal consideration by his colleagues on the Sub-Commission, at the forthcoming session to be held in August 2001, the results of the research done up until that time; he will start on that task as soon as the Council authorizes him to undertake the study. He proposes thereby

to sound out, as objectively and broadly as possible, the opinions and suggestions his colleagues have to offer on the possible structure and contents of the preliminary report he must submit to the Commission in March or April 2002, and to take account of their contributions as far as possible.

38. Secondly, it is to be expected that both the preparatory work on article 28 and paragraph 1 of article 29 of the Universal Declaration of Human Rights and on the final paragraph of the common preamble to the two International Covenants on Human Rights and the very useful study of the material carried out almost 20 years ago by his colleague on the Sub-Commission, Dr. Erica Irene Daes,¹² will constitute the basic starting points for the research to be carried out for the study.

39. Thirdly, it would be logical to assume that crucial importance should be given to the work carried out on the issue and on related matters by international intergovernmental organizations - both of the United Nations system (such as ILO, WTO, the World Bank, UNESCO and WIPO) and outside it (for example, the OAS, the OAU, the European Union and the OECD) - and non-governmental organizations (for example, the Inter-Action Council, the Lawyers Committee for Human Rights, the International Commission of Jurists and the American Association of Jurists), and to the documents drawn up by some of them,¹³ the views of a number of governments,¹⁴ and the relevant opinions of distinguished international experts.¹⁵ A questionnaire will be drawn up and circulated among the Governments of United Nations Member States and the governmental and non-governmental organizations with a view to obtaining their up-to-date ideas on the issue.

40. Fourthly, the study requested by the Commission should explore and propose replies to the following questions inter alia:

41. How did the drafters of the Universal Declaration of Human Rights and the International Covenants understand "responsibilities" and "duties" in terms of the individual's relationship with other individuals and with the community/society to which he belongs, those concepts being included in all three of those basic human rights instruments?

42. In that context, what distinction can be made with the "obligations", "responsibilities" and "duties" of all people towards the society/community in which they live?

43. Are the approximate definitions provided in those key instruments several decades ago still valid at present?

44. If so, what tangible action can and should reasonably be expected of any individual, either as part of a Government or as a simple individual, entity or institution outside it, to fulfil those duties and/or responsibilities in this "post-modern", unipolar (in geopolitical and strategic terms) and globalized (under the leaders of new economic liberalism) world of today; a world characterized, moreover, by a wide range of degrees of development, cultures and domestic legislation?

45. If, as has repeatedly been acknowledged by the United Nations human rights treaty bodies, the States bear ultimate responsibility for ensuring full promotion, complete implementation and effective protection of human rights, in what way will the recent trend in international relations towards a maximum decrease (or even elimination) of State sovereignty and State duties and hence of the true effective capacity of States to fulfil human rights undermine those crucial obligations and responsibilities?

46. How is the inevitable interrelation between government and non-governmental circles to be characterized in terms of cooperation or confrontation, and how can, on the one hand, the obligations of States under domestic legislation and international treaty-based commitments and their responsibilities in terms of human rights dovetail in practical terms with, on the other hand, the possible responsibilities and duties in that same field of all persons subject to the State's jurisdiction?

47. Lastly, if in that context the contents of article 28 and paragraph 1 of article 29 of the Universal Declaration of Human Rights and the final paragraph of the preamble to the two International Human Rights Covenants were enforced today, what would be the specific duties and responsibilities, of the non-governmental sphere to contribute to the following goals:

(a) To bring about complete implementation and unrestricted respect for the aims and principles of the United Nations Charter;

(b) To achieve, both at the internal institutional level and internationally, true universality of all human rights; this means for all persons in all societies, without discrimination and in conditions of equity; not only in the abstract - the letter of the law - but also in true conditions of effective exercise of those rights in practice;

(c) To promote effective recognition of the interrelationship, interdependence and equal importance of all of them;

(d) Successfully to counteract the detrimental effects on implementation of human rights resulting or possibly resulting from the present uncontrollable process of globalization, with its inevitable privatization of public enterprises, extreme "liberalization" of international trade, consequent increase (in an apparently never-ending spiral) of external debt, and the familiar "structural adjustments" limiting each country's sovereign decisions in every sense? Everything points to those unavoidable characteristics of that particular kind of globalization not only depriving the State, especially the underdeveloped States of the south, of the resources without which they cannot implement the economic, social and cultural rights of their citizens, but also fomenting corruption and ungovernability, in that they limit (or prevent) full citizen participation in public management, thereby generating ineffective State institutions and gradually discrediting democracy. They thereby also to a great extent help undermine civil and political rights;

(e) To establish the increasingly necessary restrictions on the activities of certain non-State sectors currently acting as they please within the international framework (in particular, transnational companies), with a view to making them meet the national and international standards ensuring the protection of the basic rights, including human rights, of the most vulnerable sectors, in particular local workers, indigenous peoples, national or ethnic minorities and migrant workers;

(f) To eliminate all factors presently working to undermine the credibility of United Nations action in the humanitarian field (undoubtedly the most noble of the world organization's task), in particular by fighting to overcome the political manipulation to which those rights are subject in international forums and to obtain total observation of the principles of objectivity, impartiality and non-selectivity in that field.

Notes

¹ See the summary record of the sixty-fifth session, E/CN.4/2000/SR.65, paras. 80 to 96.

² Draft resolution E/CN.4/2000/L.78, which had 24 sponsors.

³ On that point, see the statements of the representatives of the United States of America (*ibid.*, para. 88) and Guatemala (para. 89). The representative of Portugal, speaking on behalf of the European Union, shared their point of view (para. 93).

⁴ See the statement by the representative of Canada (*ibid.*, para. 86). In its statement opposing the text, the delegation of Portugal, again speaking on behalf of the European Union, held the same point of view (para. 94).

⁵ See the statement by the representative of Pakistan (*ibid.*, para. 91).

⁶ Decision 2000/109 of 26 April 2000.

⁷ As will be seen subsequently, as a result of those consultations, held on the first day of the second week of the Sub-Commission's fifty-second session, two draft resolutions were formally submitted on the matter (E/CN.4/Sub.2/2000/L.4 and L.5). Both ruled out the possibility of collective drafting - in plenary - of the study requested and took the first step toward the appointment of one of the members as Special Rapporteur on the issue (although they diverged as to who of the Sub-Commission's 26 members would be responsible for drafting the reports requested by the Commission for its consideration). See also the amended oral text submitted by the French expert, Mr. Joinet, of draft resolution L.4 (E/CN.4/Sub.2/2000/L.10/Add.1, para. 7), aimed at having both of the experts mentioned in the drafts appointed as Co-Special Rapporteurs to draw up the study jointly. That amendment was rejected by a roll-call vote, 12 votes to 8, with 3* abstentions (*ibid.*, para. 8).

* Translator's note: See English version: the figures tally.

⁸ See the statements by the representatives of Pakistan (E/CN.4/2000/SR.65, para. 91) and Japan (*ibid.*, para. 90).

⁹ Draft decision E/CN.4/Sub.2/2000/L.4, sponsored by 13 of the Sub-Commission's 26 experts, was approved without amendment by 14 votes to 4, with 5 abstentions, as decision 2000/111. The list of sponsors is contained in E/CN.4/Sub.2/2000/L.10/Add.1, paragraph 5, and the results of the roll-call vote in paragraph 10 of the same document.

¹⁰ The text of draft decision E/CN.4/Sub.2/2000/L.5 and the list of sponsors are contained in E/CN.4/Sub.2/2000/L.10/Add.1 (para. 12). The results of the roll-call vote in which it was defeated (6 votes for, 12 against and 5 abstentions) are also contained in that document (para. 13).

¹¹ As mentioned above, the text of the amendment submitted by Mr. Joinet is contained in E/CN.4/Sub.2/2000/L.10/Add.1 (para. 7).

¹² The individual's duties to the community and the limitations on human rights and freedoms under article 29 of the Universal Declaration of Human Rights. New York, United Nations, 1983.

¹³ For example, the American Declaration of the Rights and Duties of Man, adopted in 1948 at the Ninth International American Conference, the Universal Declaration of Human Responsibilities, drafted in 1997 by the Inter-Action Council under the chairmanship of Helmut Schmidt, former Chancellor of the Federal Republic of Germany, the Declaration on the Responsibilities of Present Generations Towards Future Generations, approved the same year by the UNESCO General Conference, and the 1998 Cape Town Commitment adopted by the International Commission of Jurists.

¹⁴ Inter alia, those presented by the delegation of Egypt to the fifty-fifth and fifty-sixth sessions of the Commission on Human Rights during the process that resulted in the adoption of resolution 2000/63, and those on "Human Security" drawn up as of 1988 by the Foreign Affairs Ministries of Canada and Norway on the basis of the Lyndoen Declaration.

¹⁵ The contributions inter alia of Bertrand Ramcharan, Pierre Sané, Theo van Boven, Noam Chomsky, Marco Sassoli, Ignacio Ramonet, Christian de Brie, John Gray, R.L. Grossman, Fr. Adam, Mario Bettati, Robert Reich, Yash Ghai, Richard Goldstone and Andrew Clapham.
